IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.5 OF 2005

The Director, M/s.Phoenix Mills Ltd....Petitioner.

Vs.

Ganpati Bhiku Kirtikar & Anr. ...Respondents.

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Mr.K.S.Bapat for the Petitioner.

Mr.Bipinchandra C.Shah for Respondent No.1.

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CORAM : DR.D.Y.CHANDRACHUD, J.

February 16, 2005.

P.C. :

At the hearing of this matter, the attention of the Court was drawn to a judgment and order dated 20th October 2004 of Mr.Justice F.I. Rebello in **The Director, M/s.Phoenix Mills Limited vs. Chunilal Sudam Nishad** (Writ Petition 2599 of 2004). The Fourth Labour Court disposed of a batch of applications under Section 33-C(2) of the Industrial Disputes Act, 1947. It is common ground between the Counsel that though separate orders

were passed by the Labour Court in all the aforesaid applications under Section 33-C(2), each of those orders is in similar terms. Mr.Justice F.I.Rebello in his judgment dated 20th October 2004 held that applications under Section 33-C(2) were maintainable and to that extent, rejected the contention of the employer. However, the Learned Judge was of the view that a remand was warranted in order to enable the Labour Court to render a specific finding in regard to certain aspects. The order of the Learned Single Judge, dated 20th October 2004, has not been challenged either by the employer or by the concerned workman and it is common ground that the matter is now ripe for hearing before the Labour Court, upon remand.

At the hearing of this petition, both the Counsel, after examining the record, have agreed that this matter is covered by the decision of Mr.Justice F.I.Rebello rendered on 20th October 2004 in Writ Petition 2599 of 2004 and it has, accordingly, been agreed that this matter may be remanded back to the Labour Court for fresh decision in terms of the earlier decision dated 20th October 2004 in Writ Petition 2599 of 2004. Accordingly, since no other point is pressed on either side, the order dated 14th November 2003

passed by the Fourth Labour Court at Mumbai in Application (IDA) No.356 of 1998 is quashed and set aside. The application is restored to the file of the Fourth Labour Court. In terms of the directions which were issued in the order dated 20th October 2004, the Labour Court shall furnish an opportunity to the parties if they so desire to lead fresh evidence, apart from the evidence that has already come on the record. The Labour Court shall thereupon pass fresh orders in the light of the directions contained in the judgment and order of this Court dated 20th October 2004. The Labour Court is directed to dispose of the matter on remand, on or before 30th June 2005.

Counsel appearing on behalf of the Respondents undertakes to file Vakalatnama within four weeks, if not already filed.

The Writ Petition is disposed of in the above terms.

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